

## **REMARKS**

### **Status of Claims**

Claims 19-31 and 37-58 are currently pending in the application, all of which stand rejected. New Claims 74-77 are presented herein, support for which is found in paragraphs [0009], [0012], and [0015] of the as-published application, U.S. Patent Appl. Publ. 2002/0020128. Claims 1-18, 32-36, and 59-73 were previously canceled. Accordingly, currently pending claims under examination are Claims 19-31, 37-58, and 74-77.

### **Rejection of Claims 19-31 and 37-58 Under 35 U.S.C. § 102(b)**

The rejection of Claims 19-31 and 37-58 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,962,081 to *Dobry et al.* ("*Dobry*") was maintained by the Patent and Trademark Office (PTO) in the July 15, 2004, Office Action. It is the position of the PTO that all the limitations of Claims 19-31 and 37-58 are disclosed in the above-recited reference.

In the July 15, 2004, Office Action, the PTO stated that the Applicants' argument that *Dobry* fails to teach or suggest a planar structure comprising a linoleum sheet containing flakes over its whole cross-section was not persuasive. The PTO stated that the thickness of the plastic layer of *Dobry* can be varied and is typically 0.02 to 0.06 inches in thickness, and that *Dobry*'s plastic chips have a thickness of 0.01 to 0.025 inches. Apparently, it is the position of the PTO that the largest chip disclosed by *Dobry* (0.025 inches thick) used with the smallest plastic layer (0.02 inches thick) would extend across the whole cross-section of the linoleum sheet, thereby anticipating Applicants' claimed invention. Respectfully, Applicants traverse this rejection for the following reasons.

1. The PTO has misconstrued the sizes of the relevant materials. *Dobry* discloses that plastic chips having a thickness of 0.01 to 0.025 inches are suitable only for consolidation into a sheet of about 0.03 inches thick (col. 2, lines 41-43), not for a sheet of less than 0.03 inches thick. Further, *Dobry* requires that "[t]he thickness of the chips should be less than the thickness of the final sheet" (emphasis added; col. 2, lines 43-44). According to this requirement, the chips of *Dobry* cannot extend across the whole cross-section of the plastic sheet. In contrast, the flakes

of Applicants' claimed planar structure do extend across the entire cross-section of the linoleum sheet.

2. The apparatus and method of Dobry cannot produce the Applicants' claimed invention. Respectfully, *Dobry* cannot anticipate the Applicants' claimed invention because the apparatus and method disclosed *Dobry* simply cannot produce the Applicants' planar structure. According to *Dobry*:

In the operation of the feeding mechanism 22, the particles and chips are placed in separate hoppers 25 and are uniformly fed to their respective feed wheels 27.... As the wheeled cart 31 passes along the tracks a uniform layer of particles is distributed over a section of the stationary web from one feeding means 23. In like manner, the second feeding means 24 feeds the large chips 10 and randomly distributes them on top of the layer of fine particles.

(Emphasis added; col. 3, lines 32-34 and 49-56.)

Moreover, once the large chips disclosed in *Dobry* are distributed on top of the layer of fine particles of plastic, it is desirable that they remain in that position. According to *Dobry*:

This invention has been described when using a conventional press, but the pressing operation can be carried out using a rotary press or calender rolls. In such a case, care must be taken to prevent the pieces from changing their position as they pass through the calender rolls since any change of position will destroy the character of the design.

(Emphasis added; col. 6, lines 61-67.)

The product disclosed in *Dobry* is formed by a stencil process in which the bulk flake material is spread through a stencil onto a carrier and then compressed by a static press (col. 1, lines 58-69; col. 4, lines 1-23). As a result, the article provided in *Dobry* is characterized by chips that are "scattered on top of the layer of particles in such a manner that they substantially cover the fine particles..." (emphasis added; col. 3, lines 17-19). This process accommodates the requirement of *Dobry* that "[t]he thickness of the chips should be less than the thickness of the final sheet" (emphasis added; col. 2, lines 43-44), and therefore the chips cannot extend across the whole cross-section of the plastic sheet.

In contrast, Applicants' method provides for combining or mixing the linoleum base composition and the flakes comprising an organic polymeric material, then rolling this linoleum

composition into a linoleum sheet, thereby forming the linoleum sheet containing over the whole cross section thereof flakes comprising an organic polymeric material. *See*: paragraphs [0021]-[0024] and [0030] of U.S. Patent Appl. Publ. 2002/0020128 (bottom page 6-top page 7 and page 8, second paragraph, translation document.)

3. *Dobry* does not teach every element of the claimed invention, nor does it teach the required arrangement of every element. Respectfully, Applicants submit that *Dobry* does not teach or suggest every element of the claimed invention, arranged as required by the claim, because *Dobry* fails to teach or suggest a planar structure comprising a linoleum sheet containing flakes over its whole cross-section. According to the MPEP:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).... “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required.

(Manual of Patent Examining Procedure § 2131.)

Respectfully, Applicants submit that *Dobry* cannot anticipate Applicants’ claimed invention because it does not teach or suggest every element of the claimed invention, arranged as required by the claim, because *Dobry* fails to teach or suggest a planar structure comprising a linoleum sheet containing flakes over its whole cross-section. The product and process disclosed in *Dobry* cannot have such a distribution of flakes, therefore, *Dobry* fails to anticipate Claims 19-31, 37-58, and 74-77. Accordingly, Applicants request that this rejection be removed and these claims allowed.

### New Claims

New Claims 74-77 are presented herein, support for which is found in paragraphs [0009], [0012], and [0015] of the as-published application, U.S. Patent Application Publication 2002/0020128. These paragraphs appear as follows in the translation document: [0009] at page 4, first paragraph; [0012] at page 4, next to last paragraph; and [0015] at page 5, third paragraph.

Support for Claims 76-77 is also found in originally-filed Claims 21 and 26, therefore no new matter has been added by these claims.

### CONCLUSION

Applicants believe the Response herein places the claims in condition for allowance and such action is respectfully requested. Applicants request an in-person interview with the Examiner at the Examiner's earliest convenience. Applicants' representative will be contacting the Examiner by telephone to schedule such a meeting.

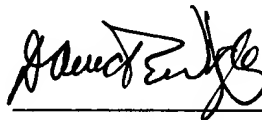
No additional fees are believed due, however, the Commissioner is hereby authorized to charge any deficiencies which may be required, or credit any overpayment, to Deposit Account Number 09-0528.

Early and favorable consideration is respectfully solicited. If the Examiner believes any informalities remain in the application that can be resolved by telephone interview, a telephone call to the undersigned attorney is requested.

Respectfully submitted,

15 December 2004

Date



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David E. Wigley, Ph.D.  
Attorney for Applicant

WOMBLE CARLYLE SANDRIDGE & RICE  
*A Professional Limited Liability Company*  
P.O. Box 7037  
Atlanta, GA 30357-0037  
404-879-2435 (Telephone)  
404-879-2935 (Facsimile)  
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